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1 Michael W. Sobol (State Bar No. 194857)
(msobol@lchb.com)
2 Allison S. Elgart (State Bar No. 241901)
(aelgart@lchb.com)
3 LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
4 Embarcadero Center West
275 Battery Street, 30th Floor
5 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
6 Facsimile: (415) 956-1008

2007 JAN 18 PM 4:10

UNITED STATES DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

7 Michael A. Caddell (admitted *pro hac vice*)
(mac@caddellchapman.com)
8 Cynthia B. Chapman (State Bar No. 164471)
(cbc@caddellchapman.com)
9 George Y. Niño (State Bar No. 144623)
(gyn@caddellchapman.com)
10 CADDELL & CHAPMAN
1331 Lamar, Suite 1070
11 Houston, Texas 77010-3027
Telephone: (713) 751-0400
12 Facsimile: (713) 751-0906

13 *Attorneys for Plaintiffs*

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15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

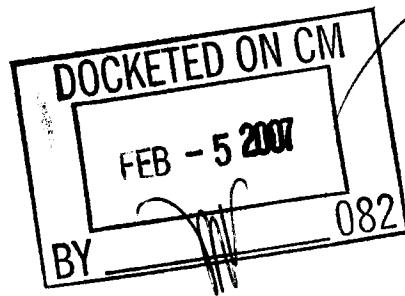
18 JOSE L. ACOSTA, *et al.*,
19 Plaintiffs,
20 v.
21 TRANS UNION, LLC, *et al.*,
22 Defendants.

23 Case No.: 06-cv-5060 DOC (MLG)

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25 **DECLARATION OF MICHAEL W.**
SOBOL CONCERNING DECLARATION
OF LEE A. SHERMAN IN RESPONSE TO
THE COURT'S ORDER GRANTING
RECONSIDERATION OF ITS EARLIER
ORDER GRANTING THE EXPEDITED
DEPOSITIONS OF ELIZABETH
WARREN AND EVAN HENDRICKS IN
CALIFORNIA

26
27 Judge: Hon. David O. Carter
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SUPPLEMENTAL DECLARATION OF
MICHAEL W. SOBOL
CASE NO. 06-cv-5060 DOC (MLG)

1 I, Michael W. Sobol, declare and state:

2 1. I have personal knowledge of the matters set forth herein, and could
 3 and would testify competently thereto if called upon to do so.

4 2. On January 9, 2007, the Court issued a Minute Order Granting *Ex*
 5 *Parte* Motion to Reconsider Order Granting Leave to Conduct Expedited
 6 Depositions (“Reconsideration Order”).

7 3. While the Court noted it is ordinarily disinclined to reconsider its
 8 orders, it did so, finding that counsel for the *Acosta* Plaintiffs “egregiously
 9 misrepresented” the *White/Hernandez* plaintiffs’ position by making the “patently
 10 false” assertion that they did not oppose having the depositions of two East Coast
 11 witnesses appear for a deposition in California. *Reconsideration Order* at 2. The
 12 Court stated, “the *White/Hernandez* Plaintiffs vigorously objected to the *Acosta*
 13 Plaintiffs’ request that the Warren and Hendricks depositions take place in Orange
 14 County, California.” *Id.*

15 4. The Court’s findings and rulings in its Reconsideration Order are well
 16 founded.

17 5. That the Court’s Reconsideration Order is well-founded is made all the
 18 more evident by the recent declaration filed by *Acosta* plaintiffs’ lawyer, Lee
 19 Sherman.¹ There, Mr. Sherman attaches an exchange of draft letters to be
 20 addressed to the deponents between myself and his office (via email) wherein I
 21 modified certain language to make absolutely clear that the *White/Hernandez*
 22 plaintiffs did not agree to having the depositions take place in California. Mr.
 23 Sherman claims that he mistakenly concluded from this exchange of drafts that I
 24 had agreed to have the depositions take place in California. A comparison of the
 25 relevant language first proposed by Mr. Sherman’s office, and then as later
 26 modified by me is instructive:

27 ¹ See Declaration of Lee A. Sherman In Response to the Court’s Order Granting
 28 Reconsideration of Its Earlier Order Granting the Expedited Depositions of
 Elizabeth Warren and Even [sic] Hendricks in California, dated January 12, 2007.

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2 Mr. Sherman's proposed language (emphasis added):

3 "With that in mind, **counsel for both Acosta and White/Hernandez**
 4 hereby **jointly** inquire as to whether you will **agree to come to California** for the
 5 requested deposition."

6 This being unacceptable to the *White/Hernandez* plaintiffs, I modified
 7 that language to read as follows (emphasis added):

8 "With that in mind, the parties hereby jointly inquire as to available
 9 dates for your deposition in the next 60 days. In addition, **counsel for the Acosta**
 10 **plaintiffs hereby request that you appear in California** for the requested
 11 deposition."

12 These proposed language edits to the draft letters – the very ones cited
 13 by Mr. Sherman in his most recent declaration – clearly demonstrate that he is once
 14 again incorrect in his assertion that the *White/Hernandez* plaintiffs had agreed to
 15 have the depositions take place in California. (I should further note that I referred
 16 to this exchange of draft letters to the deponents in my original declaration
 17 submitted in opposition to having the depositions take place in California.)

18 6. Mr. Sherman professes "confusion" caused by my statement that the
 19 *White/Hernandez* plaintiffs had decided not to oppose the request to take the
 20 depositions. There is no reason for such confusion, as our position has been
 21 consistent throughout the meet and confer process on this issue. As set forth in the
 22 *White/Hernandez* plaintiffs' opposition to the *Acosta* plaintiffs' *ex parte* request to
 23 have the depositions take place in California (and which the Court indicates it has
 24 reviewed in ordering reconsideration), on more than one occasion the
 25 *White/Hernandez* plaintiffs told Mr. Sherman that, while we would not oppose the
 26 occurrence of the depositions, we could not agree to have the depositions held in
 27 California. For example, on November 27, 2006, we offered to "facilitate the
 28 scheduling of the depositions," but further stated, "we do not think it is appropriate

1 to require that the depositions take place in California." And on November 29,
2 2006, we told Mr. Sherman's office that "we will not oppose the depositions
3 occurring on an expedited basis," but that we "cannot commit . . . that [the
4 depositions] be held in your offices [in California]."

5 7. Lastly, on December 18, 2006, I wrote to Mr. Sherman after receiving
6 his *ex parte* application to depose the witnesses in California, telling him that he
7 misrepresented our position, asking him to withdraw the application, but that if he
8 did not, we would oppose it. We cited to Mr. Sherman our prior correspondence
9 presenting our consistent position. In reply correspondence on December 19, 2006,
10 Mr. Sherman refused to withdraw the application, stating that because of our
11 "inability or unwillingness to commit" as to the venue of the depositions, he was
12 correct to file an unopposed *ex parte* application. This reveals that the statement in
13 Mr. Sherman's recent declaration filed with the Court, that "Acosta's counsel relied
14 in good faith on Mr. Sobol's statement in bringing the *ex parte* in question," is
15 disingenuous.

16 I declare under penalty of perjury under the laws of the United States that the
17 foregoing is true and correct.

18 DATED: _____, 2007, at San Francisco, California.
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MICHAEL W. SOBOL _____

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